

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

RHONDA GORDON v. STATE OF TENNESSEE

**Appeal from the Circuit Court for Maury County
No. 15990, 16359, 16557**

No. M2008-02608-CCA-R3-PC - Filed October 28, 2009

This matter is before the Court upon the State's motion to affirm the judgment of the post-conviction court by memorandum opinion pursuant to Rule 20, Rules of the Court of Criminal Appeals. Petitioner, Rhonda Gordon, has appealed the post-conviction court's order summarily dismissing the petition for post-conviction relief. In that petition, Petitioner alleges that she was afforded ineffective assistance of counsel and that her plea was not made intelligently, voluntarily and knowingly. Upon a review of the record in this case, we are persuaded that the post-conviction court was correct in summarily dismissing the petition for post-conviction relief and that this case meets the criteria for affirmance pursuant to Rule 20, Rules of the Court of Criminal Appeals. Accordingly, the State's motion is granted, and the judgment of the post-conviction court is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Trial Court Affirmed
Pursuant to Rule 20, Rules of the Court of Criminal Appeals**

JERRY L. SMITH, J., delivered the opinion of the court, in which DAVID H. WELLES and ROBERT W. WEDEMEYER, JJ. joined.

Rhonda Gordon, pro se.

Robert E. Cooper, Jr., Attorney General & Reporter; Lacy Elaine Wilber, Assistant Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

Petitioner pled guilty to four counts of the sale of less than a half gram of cocaine. The trial court entered the judgments on April 26, 2007. The judgments were filed on May 1, 2007. Petitioner was sentenced to an effective sentence of twelve years for the convictions under consideration. The effective twelve year sentence was to run consecutively to a prior sentence. On September 24, 2008, Petitioner filed her petition for post-conviction relief. The post-conviction court summarily dismissed the petition for being time-barred on October 7, 2008. Petitioner filed a timely notice of appeal.

Analysis

Petitioner argues that the trial court incorrectly dismissed her petition. The State argues that the post-conviction court was correct in its dismissal based upon the statute of limitations.

In its order, the post-conviction court stated that the petition was filed outside of the one year statute of limitations as set out at Tennessee Code Annotated section 40-30-102(a). Since July 1, 1995, the statute of limitations for filing a petition for post-conviction relief has been one year from the date of the final action of the highest state appellate court to which an appeal is taken. T.C.A. § 40-30-102(a).

There are three statutory exceptions to the statute of limitations in post-conviction matters. These exceptions are set forth in Tennessee Code Annotated section 40-30-102(b)(1), (2) & (3): (1) claims based on an appellate court ruling concerning a constitutional right not recognized at the time of the trial and given retroactive effect by the appellate courts; (2) claims based upon newly discovered evidence which establishes that the petitioner is actually innocent of the crime; and (3) claims which arise out of a situation where the petitioner received an enhanced sentence for a crime based on previous convictions which were later held to be invalid. Petitioner has not alleged that any of these exceptions applies to her case. Thus, we agree with the post-conviction court that the petition is time-barred.

The Court finds that the Petition was filed on September 24, 2008. The one year statute started running on May 1, 2007. Therefore, Petitioner had until May 1, 2008 to file her petition. The Court finds that the petition is time-barred by the applicable one year statute of limitations, and fails to meet any of the statutorily recognized exceptions to the statute of limitations.

It is therefore the opinion of the Court, that the Petitioner's pro se petition for post-conviction relief should be dismissed.

Conclusion

Rule 20, Rules of the Court of Criminal Appeals provides inter alia:

The Court, with the concurrence of all judges participating in the case, when an opinion would have no precedential value, may affirm the judgment or action of the trial court by memorandum opinion rather than by formal opinion, when:

The judgment is rendered or the action taken in a proceeding before the trial judge without a jury, and such judgment or action is not a determination of guilt, and the evidence does not preponderate against the finding of the trial judge

We determine that this case meets the criteria of the above-quoted rule and, therefore, we grant the State's motion filed under Rule 20 and we affirm the judgment of the trial court.

JERRY L. SMITH, JUDGE